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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,830	12/20/2000	Darryl Franklin Clark	14207	8827

7590 10/03/2002

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EXAMINER

PRATT, CHRISTOPHER C

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/742,830

Applicant(s)

CLARK ET AL.

Examiner

Christopher C. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-10, drawn to a nonwoven web, classified in class 442, subclass 340.
 - II. Claims 11-20, drawn to a method of making a nonwoven web, classified in class 156, subclass various.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by another process comprising extruding the polymer through a smaller spinnerette instead of metl-attenuating.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Ralph Dean on 9/10/02 a provisional election was made with traverse to prosecute the invention of group I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

DETAILED ACTION

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

7. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 1-4, 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Sawyer et al (5672415).

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Sawyer is concerned with the creation of a thermoplastic polymer fabric comprising a plurality of spunbond continuous multicomponent filaments (col. 2, lines 52-60). Said filaments having a denier less than 3 (abstract). Said filaments comprising a side-by-side or sheath-core configuration (col. 5, lines 11-12), wherein said filaments comprise a propylene and an ethylene component on the outer surface of said filament (col. 2, lines 60-61). Sawyer teaches said components to have melt flow rates within applicants claimed ranges (col. 3, lines 35-45).

Sawyer teaches alternative polymers comprising polyesters and polyamides (col. 4, lines 45-65).

9. Claims 1-4, 6-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Newkirk et al (6420285 B1).

Newkirk is concerned with the creation of a thermoplastic polymer fabric comprising a plurality of spunbond continuous multicomponent filaments (col. 5, lines 30-35). Said filaments having a denier less than 3 (table 2). Said filaments comprising a side-by-side or sheath-core configuration (col. 6, lines 45-50), wherein said filaments comprise a propylene and an ethylene component (col. 10, lines 30-55) on the outer surface of said filament (col. 11, lines 14-15). Newkirk teaches said components to have melt flow rates within applicants claimed ranges (col. 12, lines 10-50).

Newkirk teaches alternative polymers comprising polyesters and polyamides (col. 11, lines 10-11).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawyer et al (5672415) in view of Pike (5935883) and (5759926).

Sawyer teaches the use of an additional polymer component (col. 5, lines 39-41), but does not teach the spatial relationship of the three component fibers.

Pike is concerned with the creation of multicomponent fibers. Pike teaches fiber having a striped cross section (fig. 4). It would have been obvious to a person having ordinary skill in the art to form Sawyer's three-component fiber with a striped cross sections. Such a modification would have been motivated by the desire to create fibers, which can be easily split into smaller components.

12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newkirk et al (6420285 B1) in view of Pike (5935883) and (5759926).

Newkirk teaches the use of an additional polymer component (col. 11, lines 10-11), but does not teach the spatial relationship of the three component fibers.

Pike is concerned with the creation of multicomponent fibers. Pike teaches fiber having a striped cross section (fig. 4). It would have been obvious to a person having ordinary skill in the art to form Newkirk's three-component fiber with a striped cross

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sections. Such a modification would have been motivated by the desire to create fibers, which can be easily split into smaller components.

Conclusion


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Christopher C. Pratt
September 23, 2002



CHERYL A. JUSKA
PRIMARY EXAMINER